

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ALICIA HARRIS,

No. C-08-5198 EMC

Plaintiff,

v.

**ORDER RE SECOND SUPPLEMENTAL  
BRIEFING FOR PLAINTIFF'S MOTION  
FOR FINAL APPROVAL**

VECTOR MARKETING CORPORATION,

Defendant.

The Court has reviewed the parties' joint supplemental brief of December 29, 2011. *See* Docket No. 509 (joint supplemental brief). Although the parties have asserted that the additional money made available through the new settlement is an "unclaimed fund," *Nachshin v. AOL, LLC*, No. 10-55129, 2011 U.S. App. LEXIS 23244, at \*8 (9th Cir. Nov. 21, 2011) (noting that, "[i]n the context of class action settlements, a court may employ the cy pres doctrine to 'put the unclaimed fund to its next best compensation use, e.g., for the aggregate, indirect, prospective benefit of the class'"), it is not clear whether the proposed settlement here comports with *Nachshin*. The Court therefore orders the parties to provide supplemental briefing on the following issues:

(1) Is the additional money made available through the new settlement properly characterized as an "unclaimed fund"?

(2) What is the justification for not making the additional money available first to the class (either the entire class or at least the members who originally made claims) before resorting to the "next best" use of a cy pres account under *Nachshin*? *See, e.g.,* 5-23 Moore's Fed. Prac. – Civ. § 23.171 (noting that "[a]n important concern in evaluating the fairness of . . . a settlement is whether

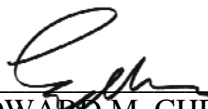
1 all class members who submit claims are fully compensated before funds are used for other  
2 purposes”); *Howe v. Townsend*, 588 F.3d 24, 35 (1st Cir. 2009) (indicating approval of an approach  
3 where remaining settlement money is redistributed to class members first to ensure they recover  
4 their losses); *Hartless v. Clorox Co.*, 278 F.R.D. 630, 642 (S.D. Cal. 2011) (noting that “[t]he issue  
5 of cy pres distribution . . . is premature until the claims process is concluded and it is determined that  
6 there are unclaimed funds”).

7 The supplemental briefs shall be filed within a week of the date of this order. Supplemental  
8 briefs shall be no longer than seven (7) pages. In lieu of separate supplemental briefs, the parties  
9 may, if they wish, file a joint supplemental brief not to exceed ten (10) pages.

10 The parties should be prepared to address the above issues at the hearing on the motion for  
11 final approval on January 27, 2012.

12  
13 IT IS SO ORDERED.

14  
15 Dated: January 5, 2012

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17   
EDWARD M. CHEN  
United States District Judge